

03-26-08

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PTO/SB/61 (01-08)

Approved for use through 03/31/2008. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b))**

Docket Number (Optional)  
59156-083

First named inventor: Norbert Diekhans  
Application No.: 09/640,126 Group Art Unit: 3671  
Filed: August 16, 2000 Examiner: Meredith C. Petravick  
Title: Combine with a Device for Automatic Cleaning Regulation

Attention: Office of Petitions  
Mail Stop Petition  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus an extensions of time actually obtained.

**APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION**

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee --required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee

- ☐ Small entity-fee \$\_\_\_\_\_ (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.
- ☒ Other than small entity - fee \$510.00 (37 CFR 1.17(m))

2. Reply and/or fee

- A. The reply and/or fee to the above-noted Office action in the form of Petition for Revival and Response to Office Action \_\_\_\_\_ (identify type of reply):
  - ☒ has been filed previously on April 23, 2002.
  - ☐ is enclosed herewith.
- B. The issue fee of \$\_\_\_\_\_.
  - ☐ has been paid previously on \_\_\_\_\_.
  - ☐ is enclosed herewith.

This collection of information is required by 37 CFR 1.137(a). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection if estimated to take 8 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P. O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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## 3. Terminal disclaimer with disclaimer fee

- ☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ \_\_\_\_\_ for a small entity or \$ \_\_\_\_\_ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).
4. STATEMENT: An adequate showing of the cause of the delay, and that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR 1.137(a) was unavoidable, is enclosed.

**WARNING:**

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

March 25, 2008

Date

  
Signature

Telephone

Number: 314-480-1500Robert C. Haldiman

Typed or printed name

Husch Blackwell Sanders, LLP

Address

Enclosures: ☒ Fee Payment Form190 Carondelet Plaza, St. Louis, MO 63105☒ Reply☐ Terminal Disclaimer Form☒ Additional sheets containing statements establishing unintentional delay☐ Other: \_\_\_\_\_**CERTIFICATE OF MAILING OR TRANSMISSION**

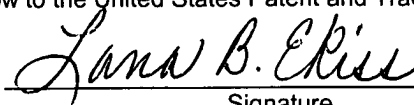
I hereby certify that this correspondence is being:

☒ I certify that the document and fee is being deposited on March 25, 2008 with the U.S. Postal Service as Express Mail under 37 C.F.R. 1.10 and is addressed to **Mail Stop Petition**, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450. **Express Mail No.:** EV 698875152 US

☐ transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

March 25, 2008

Date



Signature


Lana B. Ekiss

Typed or printed name of person signing certificate



**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED  
UNAVOIDABLY UNDER 37 CFR 1.137(a)**

NOTE: The following showing of the cause of unavoidable delay must be signed by all applicants or by any other party who is presenting statements concerning the cause of delay.

  
Signature

March 19, 2008  
Date

Robert C. Haldiman  
Typed or printed name

45,437  
Registration Number, if applicable

(In the space provided below, please explain in detail the reasons for the delay in filing a proper reply)

EXPLANATION IN DETAIL IS ATTACHED

(Please attach additional sheets if additional space is needed)



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Effective on 12/08/2004.  
Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

# FEE TRANSMITTAL

## For FY 2008

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 510.00

### Complete if Known

Application Number	09/640,126
Filing Date	August 16, 2000
First Named Inventor	Norbert Diekhans
Examiner Name	Meredith C. Petravick
Art Unit	3671
Attorney Docket No.	59156-083

### METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): \_\_\_\_\_

☒ Deposit Account Deposit Account Number: 08-3460 Deposit Account Name: Husch & Eppenberger LLC

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☒ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee

☐ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17 ☐ Credit any overpayments

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

### FEE CALCULATION

#### 1. BASIC FILING, SEARCH, AND EXAMINATION FEES

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	310	155	510	255	210	105	
Design	210	105	100	50	130	65	
Plant	210	105	310	155	160	80	
Reissue	310	155	510	255	620	310	
Provisional	210	105	0	0	0	0	

#### 2. EXCESS CLAIM FEES

Fee Description	Fee (\$)	Small Entity Fee (\$)
Each claim over 20 (including Reissues)	50	25
Each independent claim over 3 (including Reissues)	210	105
Multiple dependent claims	370	185

Total Claims Extra Claims Fee (\$) Fee Paid (\$)

- 20 or HP = \_\_\_\_\_ x \_\_\_\_\_ = \_\_\_\_\_

HP = highest number of total claims paid for, if greater than 20.

Indep. Claims Extra Claims Fee (\$) Fee Paid (\$)

- 3 or HP = \_\_\_\_\_ x \_\_\_\_\_ = \_\_\_\_\_

HP = highest number of independent claims paid for, if greater than 3.

#### 3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$260 (\$130 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets Extra Sheets Number of each additional 50 or fraction thereof Fee (\$) Fee Paid (\$)

- 100 = \_\_\_\_\_ / 50 = \_\_\_\_\_ (round up to a whole number) x \_\_\_\_\_ = \_\_\_\_\_

#### 4. OTHER FEE(S)

Non-English Specification, \$130 fee (no small entity discount)

Other (e.g., late filing surcharge): Petition for Revival

Fees Paid (\$)

510.00

#### SUBMITTED BY

Signature		Registration No. (Attorney/Agent) 45,437	Telephone 314.480.1641
Name (Print/Type)	Robert C. Haldiman		Date <u>March 19, 2008</u>

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Norbert Diekhans	Group No.: 3671
Serial No.: 09/640,126	Atty. Docket No.: 3869/59156-083
Filed: August 16, 2000	Publication: 04-0243905
For: Combine with a Device for Automatic Cleaning Regulation	Examiner: Meredith C. Petravick

Art Unit 3671  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

**PETITION FOR REVIVAL OF AN UNAVOIDABLY ABANDONED PATENT**  
**APPLICATION UNDER 37 C.F.R. § 1.137(b)**

Dear Sir:

Applicant respectfully petitions for the revival of the above-identified patent application pursuant to 37 C.F.R. § 1.137(b) which was unavoidably abandoned.

**I. The Abandonment of the Present Application was Unavoidable**

This file has already been revived per the Decision on Petition for Revival dated August 23, 2002, for the reasons stated therein. *See*, Exhibit A attached hereto. Because a substantive response to a final office action had been included with the original Petition for Revival, the decision on the petition and the substantive amendment were returned to Technology Center 3671 for consideration and further action.

Thereafter, the Patent Office lost the file. The Technology Center 3671 never sent any advisory action, final rejection, notice of abandonment or otherwise. Technology Center Supervisor Tom Will confirmed on June 3, 2007, after finding the file in response to numerous status request letters, faxes and phone calls, that the last document in his file is also the August 23, 2002 decision on the petition.

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01 FC:1432 510.00 DA

Accordingly, no paper was ever received from the patent office establishing a deadline by which this office should have filed an RCE or Notice of Appeal. Numerous status letters from applicant are submitted hereto as Exhibit B.

Presumably, the Patent Office lost the file somewhere between the petitions group and Technology Center 3671. The file was never scanned, per Mr. Will.

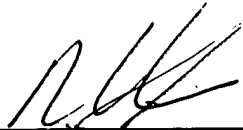
No papers were ever received by this office, not even a Notice of Abandonment. This is because no action or other paper was ever issued after August 23, 2002 by the Technology Center, who does not appear to have had the file.

Because no official action was ever received by the patent office, and because the patent office did not respond to numerous status requests, letters and phone calls regarding the whereabouts of the file until May of 2007, the abandonment of this file a second time was unavoidable. The applicant cannot respond to an office action that was never received. No useful information was available on private PAIR.

Moreover, the rules provide for further pursuit of an application when its status is unknown by means of a status request letter. Applicant made full use of this procedure, and still received no response from the patent office until June of 2007, which was by telephone from Examiner Will.

WHEREFORE, applicant prays that the above-captioned application be revived.

Respectfully submitted,

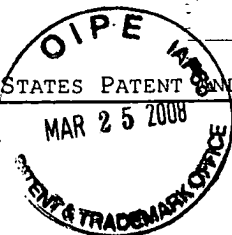


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Robert C. Haldiman  
Husch & Eppenger, LLC  
190 Carondelet Plaza  
St. Louis, MO 63105  
314-480-1641  
314-480-1505 FAX



UNITED STATES PATENT AND TRADEMARK OFFICE



Commissioner for Patents  
United States Patent and Trademark Office  
Washington, D.C. 20231  
www.uspto.gov

Paper No. 10

Robert E Muir  
Husch & Eppenger LLC  
401 Main Street  
Suite 1400  
Peoria IL 61602-1241



**COPY MAILED**

**AUG 23 2002**

**OFFICE OF PETITIONS**

In re Application of  
Norbert Diekhans  
Application No. 09/640,126  
Filed: August 16, 2000  
Atty Docket No. 3869/59156-083

DECISION ON PETITION

This is a decision on the "Petition for Revival of an Application for Patent Abandoned Unavoidably under 37 CFR \$1.137(a)," filed April 23, 2002, which is being treated as a petition to withdraw the holding of abandonment under \$1.181 based on nonreceipt of an Office action.

The petition under \$1.181 is **GRANTED**.

The above-identified application became abandoned for failure to file a timely and proper reply to the final Office action mailed July 16, 2001. The Office action set a period for reply of three (3) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. No reply having been received, the above-identified application became abandoned on October 17, 2001. A Notice of Abandonment was mailed on February 26, 2002.

The petition supports a conclusion that petitioner promptly filed the instant petition after determining that the instant application was abandoned. Petitioner states that the application became abandoned as a consequence of the final Office action not being received by the applicant's attorney. Petitioner specifically states that along with his former legal secretary, he reviewed the file, docket record book and computer database maintained by his firm for evidence of the final Office action, but no evidence of same was found. In support of a showing of nonreceipt, petitioner submits *inter alia* a copy of their docket record for the period of July 9, 2001 through August 9, 2001.

The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. In addition, a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

**EXHIBIT A**

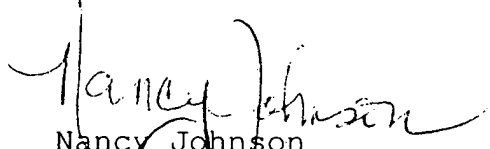
Petitioner's arguments and evidence have been considered, and found persuasive to show nonreceipt of the July 16, 2001 Office action at the correspondence address of record. Accordingly, withdrawal of the holding of abandonment for nonreceipt is warranted.

In view thereof, the holding of abandoned is hereby **WITHDRAWN**.

Since consideration of the petition under §1.137(a) is unnecessary for the reasons cited, the petition fee (\$110) is being refunded to Deposit Account No. 08-3480, as authorized.

Accompanying the petition was an amendment in reply to the final Office action<sup>1</sup>. The application is being returned to Technology Center 3671 for consideration of the amendment filed April 23, 2002.

- Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-0309.

  
Nancy Johnson  
Petitions Attorney  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy

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<sup>1</sup> Petitioner indicates that in connection with their call to the Office on or about February 11, 2002, a copy of the Notice mailed July 16, 2001 was faxed to them.